

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CARSHON CARNEY and EBONY)	
JAMES CARNEY,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 08-cv-0709-MJR
)	
MILLIS TRANSFER, INC., and)	
GARY SCHMIDT,)	
)	
Defendants.)	

OR D E R

REAGAN, District Judge:

Plaintiffs Carshon Carney and Ebony James Carney move for leave to file a second amended complaint (Doc. 44). Plaintiffs seek to cure the defects alleged in Defendants' motions to strike (Docs. 34, 38) and motion to dismiss (Doc. 35). Defendants have not filed a response opposing Plaintiffs' motion.

Rule 15(a) of the Federal Rules of Civil Procedure provides that a court should freely grant leave to amend a complaint "when justice so requires." **188 LLC v. Trinity Industries, Inc., 300 F.3d 730, 739 (7th Cir. 2002)** (citing **FED.R.CIV.P. 15(a); Brunt v. Serv. Employees Int'l Union, 284 F.3d 715, 720 (7th Cir. 2002)**). "In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. - the leave sought should, as the rules require, be 'freely given.'" **Foman v. Davis, 371 U.S. 178, 182 (1962); Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995)**.

Nothing presented by the parties leads the Court to conclude that allowing

amendment of Plaintiffs' pleading would be futile, would cause undue prejudice to Defendants, that such request was unduly delayed or that the request is sought in bad faith. As a result, the Court concludes that Plaintiffs should not be precluded from amending their compliant to resolve the alleged defects in the first amended complaint.

For these reasons, the Court **GRANTS** Plaintiffs' motion for leave to file a second amended complaint (Doc. 44). Because Plaintiffs will file an amended complaint, the Court **DENIES as moot** Defendant Schmidt's motion to strike (Doc. 34), Defendant Millis Transfer's motion to dismiss (Doc. 35) and Defendant Millis Transfer's motion to strike (Doc. 38). Plaintiffs shall file their second amended complaint by February 25, 2009.

IT IS SO ORDERED.

DATED this 23rd day of February, 2009

s/Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge